Datatreasury Corporation v. Wells Fargo & Company et al Doc. 655

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORPORTION *Plaintiff/Counter-Defendant* vs. WELLS FARGO & COMPANY; WELLS FARGO BANK, NATIONAL ASSOCIATION *Defendants/Counter-Plaintiff*	§ § § § § § § § §	 No. 2:06cv72 (DF) Jury Trial Demanded

DATATREASURY'S ANSWER TO FIRST DATA CORPORATION, TELECHECK SERVICES, INC., AND REMITCO, LLC'S AMENDED COUNTERCLAIMS

Plaintiff/Counter-Defendant DataTreasury Corporation hereby files its Answer to First Data Corporation's, TeleCheck Services, Inc.'s, and Remitco, LLC's (collectively "FDC Defendants") Amended Counterclaims to Plaintiff's First Amended Complaint for Patent Infringement and in support thereof, states as follows:

1. In paragraph 101 of Defendants' Counterclaim, FDC Defendants have incorporated Paragraphs 93 through 100 of Defendants' Amended Answer which are affirmative defenses by Defendant FDC Defendants for which Defendants have the burden of proof, and no response is required by Plaintiff/Counter-Defendant. However, in the event any response would be required by Plaintiff/Counter-Defendant, DataTreasury Corporation responds to each of the affirmative defenses contained in paragraphs 93 through 100 as denied.

2. Plaintiff/Counter-Defendant admits the allegations contained in paragraph 102 of FDC Defendants' Amended Counterclaim.

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3. Plaintiff/Counter-Defendant admits the allegations contained in paragraph 103 of FDC Defendants' Amended Counterclaim.

4. Plaintiff/Counter-Defendant admits the allegations contained in paragraph 104 of FDC Defendants' Amended Counterclaim.

FIRST COUNTERCLAIM
(Declaratory Judgment of NonInfringement)

5. In paragraph 105 of Defendants' Counterclaim, FDC Defendants have incorporated Paragraphs 93 through 100 of Defendants' Amended Answer which are affirmative defenses by Defendant FDC Defendants for which Defendants have the burden of proof, and no response is required by Plaintiff/Counter-Defendant. However, in the event any response would be required by Plaintiff/Counter-Defendant, DataTreasury Corporation responds to each of the affirmative defenses contained in paragraphs 93 through 100 as denied.

6. Plaintiff/Counter-Defendant denies the allegations contained in paragraph 106 of the first counterclaim of FDC Defendants' Amended Counterclaims.

7. Plaintiff/Counter-Defendant denies the allegations contained in paragraph 107 of the first counterclaim of FDC Defendants' Amended Counterclaims.

8. Plaintiff/Counter-Defendant denies the allegations contained in paragraph 108 of the first counterclaim of FDC Defendants' Amended Counterclaims.

SECOND COUNTERCLAIM
(Declaratory Judgment of Invalidity)

9. In paragraph 109 of Defendants' Amended Counterclaim, FDC Defendants have incorporated Paragraphs 93 through 100 of Defendants' Amended Answer which are affirmative defenses by Defendant FDC Defendants for which Defendants have the

burden of proof, and no response is required by Plaintiff/Counter-Defendant. However, in the event any response would be required by Plaintiff/Counter-Defendant, DataTreasury Corporation responds to each of the affirmative defenses contained in paragraphs 93 through 100 as denied.

10. Plaintiff/Counter-Defendant denies the allegations contained in paragraph 110 of the second counterclaim of FDC Defendants' Amended Counterclaims.

THIRD COUNTERCLAIM
(Actual and/or Implied License)

11. In paragraph 111 of Defendants' Amended Counterclaim, FDC Defendants have incorporated Paragraphs 93 through 100 of Defendants' Amended Answer which are affirmative defenses by Defendant FDC Defendants for which Defendants have the burden of proof, and no response is required by Plaintiff/Counter-Defendant. However, in the event any response would be required by Plaintiff/Counter-Defendant, DataTreasury Corporation responds to each of the affirmative defenses contained in paragraphs 93 through 100 as denied.

12. Plaintiff/Counter-Defendant denies the allegations contained in paragraph 112 of the third counterclaim of FDC Defendants' Amended Counterclaims.

FOURTH COUNTERCLAIM
(Laches and/or Statute of Limitations)

13. In paragraph 113 of Defendants' Amended Counterclaim, FDC Defendants have incorporated Paragraphs 93 through 100 of Defendants' Amended Answer which are affirmative defenses by Defendant FDC Defendants for which Defendants have the burden of proof, and no response is required by Plaintiff/Counter-Defendant. However, in the event any response would be required by Plaintiff/Counter-Defendant,

DataTreasury Corporation responds to each of the affirmative defenses contained in paragraphs 93 through 100 as denied.

14. Plaintiff/Counter-Defendant denies the allegations contained in paragraph 114 of the fourth counterclaim of FDC Defendants's Amended Counterclaims.

FIFTH COUNTERCLAIM
(Exceptional Case)

15. In paragraph 115 of Defendants' Amended Counterclaim, FDC Defendants have incorporated Paragraphs 93 through 100 of Defendants' Amended Answer which are affirmative defenses by Defendant FDC Defendants for which Defendants have the burden of proof, and no response is required by Plaintiff/Counter-Defendant. However, in the event any response would be required by Plaintiff/Counter-Defendant, DataTreasury Corporation responds to each of the affirmative defenses contained in paragraphs 93 through 100 as denied.

15. Plaintiff/Counter-Defendant denies that Defendant FDC Defendants is entitled to recover reasonable attorneys fees as alleged in paragraph 115 of the fifth counterclaim of FDC Defendants' Amended Counterclaims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff/Counter-Defendant prays for judgment against Defendants/Counter-Plaintiffs as follows:

A. For judgment dismissing the counterclaims with prejudice;

B. For a declaration that this is an exceptional case, and an award to Plaintiff/Counter-Defendant of its costs and attorneys' fees incurred herein;

C. An award of the costs of this action; and

D. That Plaintiff/Counter-Defendant be awarded such other and further relief as the Court may deem just and proper, including all relief requested in Plaintiff's Complaint.

Respectfully submitted,

_____________/S/______________________

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ATTORNEYS FOR PLAINTIFF/COUNTER-DEFENDANT,DATATREASURY CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record, via CM/ECF, on the 17th day of April, 2007.

___________/S/______________________
Edward Lewis von Hohn